

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

US BANK NATIONAL ASSOCIATION,

Plaintiff,

v.

CARLOS MARTINEZ,

Defendant.

No. C 12-1249 CW

ORDER GRANTING
APPLICATION TO
PROCEED IN FORMA
PAUPERIS AND
REMANDING
COMPLAINT

Defendant Carlos Martinez applies for leave to proceed in forma pauperis (IFP) to remove this action from state court. The matter was decided on the papers. Having considered all of the papers filed by Defendant, the Court GRANTS the application to proceed IFP and remands the action for lack of subject matter jurisdiction.

DISCUSSION

A court may authorize a defendant to defend an action in federal court without prepayment of fees or security if the defendant submits an affidavit showing that he or she is unable to pay such fees or provide such security. See 28 U.S.C. § 1915(a). Defendant has submitted the required documentation, and it is evident from his application that his assets and income are insufficient to enable him to defend the action. Accordingly, his application to proceed without the payment of the filing fee is GRANTED.

The Court's grant of Defendant's application to proceed IFP, however, does not mean that he may defend this action in federal

1 court. A court is under a continuing duty to dismiss a case filed
2 without the payment of the filing fee whenever it determines that
3 the action "(i) is frivolous or malicious; (ii) fails to state a
4 claim on which relief may be granted; or (iii) seeks monetary
5 relief against a defendant who is immune from such relief." 28
6 U.S.C. § 1915(e)(2)(B)(i)-(iii). United States district courts
7 are courts of limited jurisdiction. Such courts have subject
8 matter jurisdiction only if the case or controversy before them
9 fits into one of the particular categories of jurisdiction enacted
10 by Congress. "A federal court is presumed to lack jurisdiction in
11 a particular case unless the contrary affirmatively appears."
12 Stock West, Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th
13 Cir. 1989). A court may remand an action sua sponte if it
14 concludes that it lacks subject matter jurisdiction. Booker v.
15 Yates, 2009 WL 111671, *2 (E.D. Cal.).

16 Defendant seeks to remove this state law unlawful detainer
17 action from state court based upon federal question jurisdiction
18 under 28 U.S.C. § 1331. Section 1331 provides that "district
19 courts shall have original jurisdiction of all civil actions
20 arising under the Constitution, laws, or treaties of the United
21 States." "The presence or absence of federal-question
22 jurisdiction is governed by the well-pleaded complaint rule, which
23 provides that federal jurisdiction exists only when a federal
24 question is presented on the face of the plaintiff's properly
25 pleaded complaint.'" Rivet v. Regions Bank of La., 522 U.S. 470,
26 475 (1998) (quoting Caterpillar Inc. v. Williams, 482 U.S. 386
27 (1987)). A federal defense is not part of a plaintiff's properly
28 pleaded statement of his or her claim. Id. (citing Metropolitan

1 Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987)). A case,
2 therefore, may not be removed to the federal court based on a
3 federal defense "even if the defense is anticipated in the
4 plaintiff's complaint, and even if both parties admit that the
5 defense is the only question truly at issue in the case."
6 Franchise Tax Bd. Of State of Cal. v. Constr. Laborers Vacation
7 Trust for S. Cal., 463 U.S. 1, 14 (1983); Rivet, 522 U.S. at 475.

8 This removed case is a residential unlawful detainer action
9 following a judicial foreclosure. It contains one cause of action
10 for unlawful detainer, which arises exclusively under state law.
11 In his notice of removal, Defendant argues that federal question
12 jurisdiction exists because Plaintiff has violated the federal
13 Protecting Tenants at Foreclosure Act of 2009 which "raises
14 questions as to what rights tenants have because of the effect of
15 foreclosure." Because the only possible federal issue in this
16 case involves a defense, federal question jurisdiction is lacking.

17 Because the Court lacks subject matter jurisdiction over this
18 case, it is remanded.

19 CONCLUSION

20 For the foregoing reasons Plaintiff's IFP application is
21 granted. The case is remanded.

22
23 IT IS SO ORDERED.

24
25 Dated: 4/16/2012

26 
27 CLAUDIA WILKEN
28 United States District Judge